IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITOIN NO.1112 OF 2006

Sanjeeb Neelram Sharma ..... Petitioner.

V/s

Amar K. Parekh & Anr. ..... Respondents.

Mr. Chetan Agrawal for the Petitioner.

None for Respondent No.1.

Mr. Y.S. Shinde, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 29th August, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the Petitioner. None appears on behalf of Respondent No.1 though he is served.

2. Petitioner takes exception to the order passed by the 4th Ad-hoc Additional Sessions Judge, Mumbai in four revision applications which were filed by Respondent No.1 herein whereby the Sessions Court was pleased to set aside the order passed by the 13th Metropolitan Magistrate Court and restore the criminal cases on the file of the Metropolitan Magistrate, 13th Court, Dadar and directed the said Court to proceed with the complaints in accordance with law.

3. Brief facts which are relevant for the purpose of deciding this Writ Petition are as under :-

4. Respondent No.1 filed complaints under section 138 of the Negotiable Instruments Act on 05/07/2004 and 04/09/2004 before the 29th Metropolitan Magistrate's Court, Dadar. The learned Magistrate was pleased to issue process on the said complaints. Thereafter, the Petitioner appeared before the said Court and his plea was recorded. The said Court on 08/10/2004 transferred both the complaints to the 7th Metropolitan Magistrate's Court, Dadar, purportedly in view of the administrative directions issued by the Hon'ble High Court. On 04/04/2005, 7th Metropolitan Magistrate's Court was pleased to return both complaints on the ground that the said Court did not have jurisdiction and directed the complainant to present the said complaints before the proper court. On 11/04/2005, a letter was issued alongwith the said two complaints in order to enable the complainant to present it before the proper Court.

5. It is the case of the Petitioner that instead of presenting the complaints immediately before the proper Court, Respondent No.1 waited till 10/05/2005 and presented both the complaints to the 13th Metropolitan Magistrate's Court, Dadar. When the matter came up before the said Court, objection was raised by the Petitioner herein regarding delay which was caused in presenting both the complaints beyond the statutory period of limitation. A reply was filed by Respondent No.1 and the reason why delay was caused was mentioned in his reply and it was requested that the delay caused

may be condoned since the said period was wasted by the complainant in presenting the complaints in wrong Court.

6. The grievance of the Petitioner is that no separate application for condonation of delay was filed. On 19/10/2005, 13th Metropolitan Magistrate's Court was pleased to dismiss both the complaints on the ground that the said complaints were presented beyond the statutory period of limitation. Against the said order, Respondent No.1 preferred revision application before the Sessions Court which was allowed. Petitioner is challenging the aforesaid order in this Writ Petition.

7. It is submitted by the learned Counsel appearing on behalf of the Petitioner that the complaints having been submitted beyond the statutory period of limitation without filing an application for condonation of delay, the learned Magistrate had rightly dismissed the said complaints. He submitted that the provisions of section 142 puts an embargo on the complaints being entertained by the Magistrate beyond the period of limitation. He submitted that the said complaints were filed belatedly with an ulterior motive to harass the Petitioner. He submitted that under section 142 of the Negotiable Instruments Act, complaint beyond the period of one month could not be entertained. He submitted that though the said provision was amended, no application was filed for condonation of delay and, therefore, the Sessions Court was not justified in restoring the said complaints. In support of the said submissions, the learned Counsel relied upon the Judgment of Andhrapradesh High Court in Rayala

Sima Agro Enterprises Vs. Gujarat Agro Industries and anr. reported in **2003 CRI.L.J. 1627**, judgment of Supreme Court in Bharat Damodar Kale and another Vs. State of A.P reported in **2003 CRI.L.J. 4543** and the judgment of Bombay High Court in Mr. R.K. Chawla & Anr. Vs. M/s Goa Antibiotics & Pharmaceuticals Ltd & Anr reported in **2005 ALL MR (Cri) 2789.**

8. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the Petitioner. It is an admitted position that the trial has commenced. Section 142 of the Negotiable Instruments Act, after amendment, permits the Court to condone the delay, if sufficient cause is shown for not filing the complaint within the period of limitation. In the present case, the Sessions Court has considered the reason given by the complainant for presenting the complaint beyond the period of limitation and accepted the said explanation and has condoned the delay. It is an admitted position that the complainant had to go from one court to another and, as a result, delay was caused in presenting the complaint. He has also stated that after the complaints were returned by 7th Metropolitan Magistrate Court, on account of his illness, he could not present the complaints to the appropriate Court. The Sessions Court has accepted the said explanation. No dispute is raised regarding the medical certificate which is annexed by the complainant to his application. The Sessions Court has considered all these aspects and also the judgments on which reliance has been placed by the Petitioner in this Court.

9. In my view, there is no reason to interfere with the aforesaid order. Trial Court is directed to decide the case as expeditiously as possible. Writ Petition is accordingly dismissed.

(V.M. KANADE, J.)